

Approved: Kristy J. Greenberg
KRISTY J. GREENBERG
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Assistant United States Attorneys

Before: THE HONORABLE FRANK MAAS
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA :
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- v. - :
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KRISTIN DAVIS, :
:
Defendant. :
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SEALED COMPLAINT
Violations of
21 U.S.C. §§ 841(a)(1),
841(b)(1)(C), 841(b)(2),
and 18 U.S.C. § 2
COUNTY OF OFFENSE:
NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

LIAM MCELEARNEY, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE

1. On or about January 7, 2013, in the Southern District of New York, KRISTIN DAVIS, the defendant, intentionally and knowingly did distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

2. The controlled substances involved in the offense were (i) amphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(b)(1)(C); (ii) alprazolam, a Schedule IV controlled substance, in violation of Title 21, United States Code, Section 841(b)(2); (iii) zolpidem, a Schedule IV controlled substance, in violation of Title 21, United States Code, Section 841(b)(2); and (iv) carisoprodol, a Schedule

IV controlled substance, in violation of Title 21, United States Code, Section 841(b)(2).

(Title 21, United States Code, Sections 812, 841(a)(1),
841(b)(1)(C), and 841(b)(2).)

COUNT TWO

3. On or about February 6, 2013, in the Southern District of New York, KRISTIN DAVIS, the defendant, intentionally and knowingly did distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

4. The controlled substances involved in the offense were (i) amphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(b)(1)(C); (ii) zolpidem, a Schedule IV controlled substance, in violation of Title 21, United States Code, Section 841(b)(2); and (iii) alprazolam, a Schedule IV controlled substance, in violation of Title 21, United States Code, Section 841(b)(2).

(Title 21, United States Code, Sections 812, 841(a)(1),
841(b)(1)(C), and 841(b)(2).)

COUNT THREE

5. On or about March 21, 2013, in the Southern District of New York, KRISTIN DAVIS, the defendant, intentionally and knowingly did distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

6. The controlled substances involved in the offense were (i) amphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(b)(1)(C); (ii) alprazolam, a Schedule IV controlled substance, in violation of Title 21, United States Code, Section 841(b)(2); and (iii) carisoprodol, a Schedule IV controlled substance, in violation of Title 21, United States Code, Section 841(b)(2).

(Title 21, United States Code, Sections 812, 841(a)(1),
841(b)(1)(C), and 841(b)(2).)

COUNT FOUR

7. On or about April 24, 2013, in the Southern District of New York, KRISTIN DAVIS, the defendant, intentionally and knowingly did distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

8. The controlled substance involved in the offense was oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(b)(1)(C).

(Title 21, United States Code, Sections 812, 841(a)(1), and 841(b)(1)(C); Title 18, United States Code, Section 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

9. I am a Special Agent with the FBI and have been employed by the FBI since October 2008. I have participated in the investigation of this matter, and I am familiar with the information contained in this affidavit based on my own personal participation in the investigation, my review of documents, video and audio recordings, and conversations that I have had with other law enforcement agents and individuals. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents, and the actions and statements of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

Background

10. Based on my training and experience, which includes the investigation of diversion of legitimately-manufactured pharmaceuticals to unauthorized individuals, and my conversations with other law enforcement agents, I am familiar with various types of controlled substances that are often distributed illegally. As relevant to this investigation, I have learned the following:

a. Amphetamine is a psychostimulant. It is a Schedule II controlled substance. Amphetamine is the active ingredient in, among other things, Dexedrine and Adderall.

b. Amphetamine may be prescribed legitimately to treat conditions such as attention deficit hyperactivity disorder and/or narcolepsy. There is an illegal market for amphetamine, often referred to as "speed," as a substitute for, or adjunct to, other illegal drugs, such as methamphetamine and cocaine.

c. In the illegal market, amphetamine pills are often referred to by names that are similar to brands of amphetamine pills, such as "Addy" for Adderall.

d. Alprazolam is a psychoactive drug. It is a Schedule IV controlled substance. Alprazolam is the active ingredient in Xanax.

e. Alprazolam may be prescribed legitimately to treat conditions such as panic disorder and anxiety disorders. There is an illegal market for alprazolam, which is often used as a substitute for, or adjunct to, other illegal drugs, such as LSD, heroin or opiates.

f. In the illegal market, alprazolam pills are often referred to by names that are similar to certain brands of pills, such as "Xena" or "Zena" for Xanax.

g. Zolpidem is a sedative/hypnotic drug. It is a Schedule IV controlled substance. Zolpidem is the active ingredient in Ambien.

h. Zolpidem may be prescribed legitimately to treat conditions such as insomnia and certain brain disorders. There is an illegal market for zolpidem, which is often used as a substitute for, or adjunct to, other illegal drugs, such as amphetamine, methamphetamine, cocaine, and 3, 4-methylenedioxymethamphetamine (commonly known as "MDMA" or "ecstasy").

i. Carisoprodol is a skeletal muscle relaxant. It is a Schedule IV controlled substance. Carisoprodol is the active ingredient in Soma.

j. Carisoprodol may be prescribed legitimately to treat short-term acute painful muscles and other painful musculoskeletal conditions. There is an illegal market for carisoprodol, which is often used in conjunction with opioid drugs and so-called "date rape" drugs.

k. Oxycodone is a semi-synthetic opioid analgesic that is similar to codeine and morphine. It is a Schedule II controlled substance. Oxycodone is the active ingredient in OxyContin, Percocet, Endocet, Roxicodone, and Roxicet.

l. Oxycodone may be prescribed legitimately to relieve moderate to severe pain, but can result in addiction similar to an addiction to codeine or morphine. There is an illegal market for oxycodone, as a substitute for, or adjunct to, other illegal narcotics, such as heroin.

m. In the illegal market, oxycodone pills are often referred to by names that are similar to brands of pills, such as "Roxy" for Roxicodone or Roxicet, or "Perc" for Percocet. They may also be referred to by the imprint on individual pills, such as "OC," which denotes the pill's brand/type, or by the color of a certain brand/type, such as "blues" or "greens."

n. Oxycodone pills come in various milligram strengths, including 5 milligrams, 30 milligrams, and 80 milligrams. In the illegal market, stronger pills command higher prices, and dealers often will note a pill's strength in connection with discussing its price. For example, an individual might offer to sell "80s" for a certain price and "30s" for a different, lower price.

11. Since in or about Fall 2011, I have participated in an FBI investigation into individuals distributing prescription medications containing controlled substances, such as amphetamine, alprazolam, zolpidem, carisoprodol, and oxycodone, without authorization. The investigation has involved, among other things, surveillance, the use of confidential sources, and the consensual recording of telephone calls and meetings.

The Investigation

12. A cooperating witness (the "CW") was arrested in or about December 2012, and has pled guilty in this district to narcotics conspiracy and distribution offenses. The CW is cooperating with the FBI and the Government in the hope of obtaining leniency with respect to sentencing in the CW's case. The CW's information has proven accurate and reliable in the past, and has been corroborated by, among other things, surveillance, recordings and text messages. The CW has informed me, in substance and in part, of the following:

a. From in or about 2009, up to and including in or about Fall 2011, KRISTIN DAVIS, the defendant, purchased controlled substances, including ecstasy pills, Adderall pills, and Xanax pills, from the CW. DAVIS paid the CW hundreds of dollars for each purchase of such substances, which occurred approximately once a month or every other month. DAVIS told the CW that she purchased ecstasy and Adderall pills at least in part to provide them to others, explaining that she provided these drugs to others at house parties. Specifically, on a few occasions when DAVIS purchased controlled substances from the CW, DAVIS brought a list of what she intended to purchase, and told the CW that she intended to provide the controlled substances on the list to others. DAVIS also told the CW that DAVIS had received drugs from sellers other than the CW.

b. In or about Fall 2011, DAVIS asked the CW if the CW would accept Adderall in exchange for ecstasy. The CW agreed to this arrangement. From in or about Fall 2011, up to and including in or about Spring 2012, DAVIS provided a total of approximately 240 Adderall pills to the CW in exchange for approximately 120 ecstasy pills. DAVIS and the CW exchanged drugs once a month or every other month, and the CW charged DAVIS the price of the ecstasy that the CW provided to DAVIS, minus the value of the Adderall that DAVIS provided to the CW.

c. Thereafter, from in or about Spring 2012, up to and including in or about December 2012, DAVIS sold approximately 120 Adderall pills, 15-30 Xanax pills, 30-40 Ambien pills, and 30-60 Soma pills to the CW approximately once a month, in return for cash.

d. Prior to and during the time when DAVIS was trading drugs with or selling drugs to the CW, the CW told DAVIS that the CW was a drug dealer and was purchasing pills with the purpose of selling them to the CW's clients. DAVIS was also present on at least one occasion when the CW opened a safe that the CW maintained at the CW's residence, containing numerous prescription pills and other controlled substances, stored for resale.

13. In or about January 2013, the CW identified a photograph of KRISTIN DAVIS, the defendant, as depicting the individual from whom the CW had previously purchased controlled substances and to whom the CW had previously sold controlled substances, as described above in Paragraph 12.

The January 7, 2013 Sale

14. As noted above, based on my conversations with the CW, I learned that KRISTIN DAVIS, the defendant, sold prescription pills to the CW on a regular basis. I further learned that or about January 7, 2013, DAVIS and the CW had arranged for DAVIS to sell prescription pills to the CW. I directed the CW to consummate this transaction using money provided by the FBI and while equipped with an audio and video recording device.

15. On or about January 7, 2013, I observed KRISTIN DAVIS, the defendant, enter a building (the "Building") in which the CW's apartment (the "Apartment") is located in New York, New York.

16. Based on my interviews of the CW and my review of a consensual audio and video recording made by the CW, I have learned that after I observed KRISTIN DAVIS, the defendant, enter the Building, DAVIS and the CW met at the Apartment. During the meeting, the CW purchased 215 pills from DAVIS in return for \$675 in cash, which money had been provided to the CW by the FBI. During the meeting, the CW and DAVIS had the following exchanges:

DAVIS: 120 of this one.

CW: Ok, 120 all together, so each one is 16

DAVIS: Ok, and this one is the Ambien, there are 30 of those.

CW: Ok, A's. So what do we do these for? 3? 3.
Ok, no problem.

. . . .

CW: Ok, so how are we on [unintelligible ("UI")].

DAVIS: 30. And then 30 of the Soma.

. . . .

DAVIS: And then I brought you 45 of the [UI].

CW: Ok, 3 times 30 of the Soma. Oh thank you, thank you again.

DAVIS: How much is this going for the 45?

Based on my training and experience and discussions with the CW, I believe that in the above exchanges, the CW and DAVIS are discussing the sale of 120 pills of one type ("120 of this one"), 30 Ambien pills ("this one is the Ambien, there are 30 of those"), 30 Soma pills ("And then 30 of the Soma"), and 45 pills of another type ("and then I brought you 45 of the [UI]").

17. Shortly after the sale described above, the CW met with another FBI agent and me, at which time I took custody of the 215 pills that KRISTIN DAVIS, the defendant, had sold to the CW.

18. Based on my training and experience, I identified the pills that the CW purchased from KRISTIN DAVIS, the defendant, during the meeting described above as 120 amphetamine pills, 35 alprazolam pills,¹ 30 zolpidem pills, and 30 carisoprodol pills, based upon their shape, size and imprint.

19. From speaking with the CW and from reviewing text messages between the CW and KRISTIN DAVIS, the defendant, I have learned that on or about January 9, 2013, the CW and DAVIS exchanged the following text messages:

CW: Hi Kristin . . . Zena was ten short. Just letting u know. Don't worry about it all, unless someone miscounted.

DAVIS: Shit was me that miscounted. Will txt u tom + c if I can drop then or fri.

CW: No, please not necessary, 'cuz I owed u something like 20 . . . THANK U 4 coming!! . . .

DAVIS: Oh we will figure it out. If u run low let me kno!!! Ur the best! . . .

¹ Based on my conversation with the CW, my review of the consensual audio and video recording made by the CW on or about January 7, 2013, and my review of the pills recovered from the sale, I learned that KRISTIN DAVIS, the defendant, told the CW that DAVIS was going to sell the CW 45 Xanax pills, but she instead sold only 35 Xanax pills to the CW, as DAVIS confirmed in the text messages discussed in Paragraph 19.

CW: I just always let every1 know, even if they give me too many . . . Ur the best! :)

Based on my training and experience and discussions with the CW, I believe that in the foregoing text messages, the CW and DAVIS are discussing the sale of Xanax ("Zena") on or about January 7, 2013. I further believe that in these text messages, the CW informed DAVIS that she sold the CW ten fewer Xanax pills than the CW had paid for, and DAVIS replied that she miscounted and that they would figure it out.

The February 6, 2013 Sale

20. From speaking with the CW and from reviewing text messages between the CW and KRISTIN DAVIS, the defendant, I have learned that between on or about January 27, 2013 and February 5, 2013, the CW and DAVIS exchanged text messages in which they discussed setting up a time to meet.

21. Based on my conversations with the CW, I have learned that on or about February 6, 2013, KRISTIN DAVIS, the defendant, and the CW arranged to have a meeting at which DAVIS would sell prescription pills to the CW.

22. On or about February 6, 2013, I observed KRISTIN DAVIS, the defendant, enter the Building.

23. Based on my interviews of the CW and my review of a consensual audio and video recording made by the CW, who was equipped with an audio and video recording device provided by the FBI, I have learned that after I observed KRISTIN DAVIS, the defendant, enter the Building, DAVIS and the CW met at the Apartment. During the meeting, in which the CW purchased 199 pills from DAVIS in return for \$580 in cash, which money had been provided to CW by the FBI, the CW and DAVIS had the following exchange:

DAVIS: This is, I got you 30 Xanax.

CW: Ok, so 30 Xanax, go ahead.

DAVIS: 30 Xanax, plus 10. [UI]

CW: So this is 40, right?

DAVIS: Whatever it is, because I didn't want to undercount.

CW: Ok, so this is 40 Xanax.

DAVIS: These are a total of 41.

CW: 41 of which?

DAVIS: Uh, Ambien.

CW: Ok, 41 of Ambien.

DAVIS: The insurance covers 30, which is the reason why I can . . .

CW: Oh, so the other 30 you buy?

DAVIS: The other 15, yeah I buy. [UI]

CW: That's very cheap. You know what Ambien can go for? I resell for as much as 10.

. . .

DAVIS: 190 so, make sure it's right. 119 is the number of Adds.

CW: Ok. 119 is the number of Adds.

DAVIS: 41 is the number of Ambien.

CW: And they're the 20s right?

DAVIS: Yes.

CW: Ok. Ok. Ok, and what was the next number?

DAVIS: 41 for the Ambien, and 30 Xanax.

CW: Ok, thank you so much.

Based on my training and experience and discussions with the CW, I believe that in the above exchanges, the CW and DAVIS are discussing the sale of 119 Adderall pills ("119 is the number of Adds"), 41 Ambien

pills ("41 is the number of Ambien"), and 40 Xanax pills ("30 Xanax, plus 10." "Ok, so this is 40 Xanax.").

24. Shortly after the sale described above, the CW met with another FBI agent and me, at which time I took custody of 199 pills that KRISTIN DAVIS, the defendant, had sold to the CW.

25. Based on my training and experience, I identified the pills that the CW purchased from KRISTIN DAVIS, the defendant, during the meeting described above as 118 amphetamine pills, 41 zolpidem pills, and 40 alprazolam pills, based upon their shape, size and imprint.

The March 21, 2013 Sale

26. Based on my conversations with the CW, I have learned that the CW and KRISTIN DAVIS, the defendant, agreed to meet on or about March 21, 2013, for the purpose of DAVIS selling prescription pills to the CW.

27. On or about March 21, 2013, I observed KRISTIN DAVIS, the defendant, enter the Building.

28. Based on my interviews of the CW and my review of a consensual audio and video recording made by the CW, who was equipped with an audio and video recording device provided by the FBI, I have learned that after I observed KRISTIN DAVIS, the defendant, enter the Building, DAVIS and the CW met at the Apartment. During the meeting, the CW purchased approximately 170 pills from DAVIS in return for \$510 in cash, which money had been provided to CW by the FBI.

29. Based on my review of the consensual audio and video recording made by the CW, I have also learned that, during the above-referenced meeting, KRISTIN DAVIS, the defendant, and the CW engaged in the following exchange:

CW: How many of the time release?

DAVIS: There are 20 of the time release.

. . . .

CW: How many of the 20 mg, I mean the regular addys?

DAVIS: 80.

CW: And how many of those?

DAVIS: 30.

CW: Ok. Soma milligrams are the heavier one, right? And how many Xanax?

DAVIS: 40.

CW: So then it's 50, 90, 170, times 3? Does that make sense?

DAVIS: Yes.

CW: Are you sure?

DAVIS: Yes, positive.

Based on my training and experience and discussions with the CW, I believe that in the above exchanges, the CW and DAVIS are discussing the sale of 80 Adderall pills (CW: "How many of the 20 mg, I mean the regular addys?" DAVIS: "80"), 40 Xanax pills (CW: "And how many Xanax?" DAVIS: "40"), 30 Soma pills (CW: "And how many of those?" DAVIS: "30." CW: "Ok. Soma milligrams are the heavier one, right?"), and 20 Adderall time release capsules ("there are 20 of the time release").

30. Shortly after the sale described above, the CW met with another FBI agent and me, at which time I took custody of 170 pills that KRISTIN DAVIS, the defendant, had sold to the CW.

31. Based on my training and experience, I identified the pills that the CW purchased from KRISTIN DAVIS, the defendant, during the meeting described above as 80 amphetamine pills, 40 alprazolam pills, 30 carisoprodol pills, and 20 amphetamine time release capsules, based upon their shape, size and imprint.

The April 24, 2013 Sale

32. From speaking with the CW, I know that prior to the April 24, 2013 sale, the CW asked KRISTIN DAVIS, the defendant, if she could provide oxycodone for the CW.

33. From speaking with the CW and from reviewing text messages between the CW and KRISTIN DAVIS, the defendant, I have learned that on or about April 7, 2013, the CW and DAVIS exchanged the following text messages:

DAVIS: Hi there! Sorry its late my phone was dead. This guy . . . [Individual-1] has what u been looking for - will want 20 each. If its ok I'd like to give him ur # bc we are on rocky grounds + I don't kno how much longer we will speak. He is consistent.

CW: Sure! Thank you, Kristin!

Based on my training and experience and discussions with the CW, I believe that in the foregoing text messages, when DAVIS stated that Individual-1 "has what u been looking for," DAVIS was referring to oxycodone; when DAVIS stated that "will want 20 each," she meant \$20 per pill; and when DAVIS stated that "[h]e is consistent," she meant that Individual-1 could supply the CW with oxycodone on a regular basis.

34. From speaking with the CW, I have learned that on or about April 8, 2013, KRISTIN DAVIS, the defendant, contacted the CW and discussed, in substance and in part, that Individual-1 would sell Individual-1's oxycodone to the CW for \$20 per pill, as DAVIS had previously informed the CW by text message.

35. From speaking with the CW and from reviewing text messages between the CW and KRISTIN DAVIS, the defendant, I have learned that on or about April 9-10, 2013, the CW and DAVIS again exchanged text messages, during which the CW asked if Individual-1 would be willing to meet on Thursday. DAVIS replied that she texted Individual-1, but "he won't have until tue. Ill bring him by then." DAVIS also stated that "it is new but limited." The CW told DAVIS to "please hold the new but limited ones 'til Tues" Based on my training and experience and discussions with the CW, I believe that in the foregoing text messages, DAVIS was arranging a meeting with Individual-1 and the CW for the CW to purchase oxycodone from Individual-1. When DAVIS stated "he won't have until tue," she was referring to Individual-1 not having oxycodone until Tuesday. I further believe that when DAVIS states that it is "new but limited," by "new" she is referring to oxycodone, and by "limited" she means limited in the quantity of pills.

36. From speaking with the CW and from reviewing text messages between the CW and KRISTIN DAVIS, the defendant, I have learned that on or about April 15, 2013, DAVIS sent a text message to the CW with Individual-1's name and phone number.

37. From speaking with the CW and from reviewing a consensually recorded phone call between the CW and KRISTIN DAVIS, the defendant, I have learned that on or about April 18, 2013, the CW and DAVIS discussed setting up a meeting with DAVIS, Individual-1 and the CW. DAVIS told the CW that "the only reason that I'm still involved in these communications [with Individual-1] is because I want to help you out." DAVIS further stated that she did not "mind walking [Individual-1] into your building and into your apartment, but I will not stay."

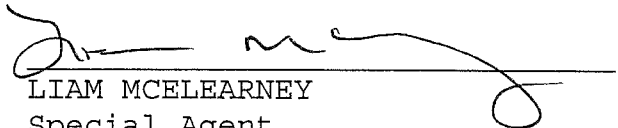
38. On or about April 24, 2013, I observed KRISTIN DAVIS, the defendant, and Individual-1 enter the Building.

39. Based on my interviews of the CW and my review of a consensual audio and video recording made by the CW, who was equipped with an audio and video recording device provided by the FBI, I have learned that after I observed KRISTIN DAVIS, the defendant, and Individual-1 enter the Building, DAVIS, Individual-1 and the CW met at the Apartment. During the meeting, the CW purchased 180 pills from Individual-1 in return for \$3600 in cash, which money had been provided to the CW by the FBI. The CW asked Individual-1 if there were "180," and what the CW owed Individual-1. Individual-1 said yes, "36." The CW asked if these were "30s." DAVIS then left the Apartment. After DAVIS left the Apartment, Individual-1 stated that Individual-1 gets "180" monthly, and Individual-1 should be getting more at the end of the month or early next month.

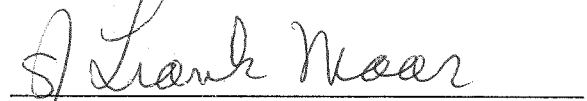
40. Shortly after the sale described above, the CW met with another FBI agent and me, at which time I took custody of 180 pills that Individual-1 had sold to the CW, with the assistance of KRISTIN DAVIS, the defendant.

41. Based on my training and experience, I identified the pills that the CW purchased from Individual-1 during the meeting described above as 180 oxycodone pills, based upon their shape, size and imprint.

WHEREFORE, deponent respectfully requests that a warrant be issued for the arrest of KRISTIN DAVIS, the defendant, and that she be imprisoned, or bailed, as the case may be.


LIAM MCELEARNEY
Special Agent
Federal Bureau of Investigation

Sworn to before me this
2nd day of August, 2013


THE HONORABLE FRANK MAAS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK